

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL KITCHEN,

Plaintiff,

v.

CASE NO. 14-12883

Hon. Lawrence P. Zatkoff

DANIEL HEYNS, et al.,

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Pro se Plaintiff filed this case pursuant to 42 U.S.C. § 1983, alleging that Defendants confiscated his property, sexually harassed him, and filed false misconduct charges against him, all purportedly in retaliation for complaints he made about and/or grievances he filed against officials within the Michigan Department of Corrections. This matter is currently before the Court on Magistrate Judge David R. Grand's Report and Recommendation (Docket #24), wherein the Magistrate Judge recommends that Plaintiff's motion for preliminary injunction (Docket #4) be granted in part and denied in part. Defendants filed objections to the Report and Recommendation (to which Plaintiff responded), and Plaintiff also filed objections to the Report and Recommendation.

After a thorough review of the court file, including the original complaint, the motion to amend complaint, and the amended complaint, as well as the Report and Recommendation and the objections filed by both parties (and Plaintiff's response to the Defendants' objections), this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of the Court. The Court notes that, even if it assumed that Plaintiff could demonstrate a likelihood of success on the merits as it related to the confiscation of his personal property, there is an absence of irreparable harm regarding such items. The Court further notes that the Magistrate Judge's conclusion that Plaintiff's amended complaint supplemented, rather than replaced, his original complaint is supported by case law and the filings in this case. Finally, the Court notes that Defendants had two

opportunities to address the merits of whether Plaintiff was entitled to a preliminary injunction with respect to his legal papers: once in their response to Plaintiff's motion for preliminary injunction and once when filing their objections to the Report and Recommendation. Rather than doing so, Defendants elected to focus solely on: (a) their contention that Plaintiff's amended complaint replaced, rather than supplemented, Plaintiff's original complaint, and (b) how the Magistrate Judge somehow "sandbagged" the Defendants. As a result, like the Magistrate Judge, this Court is unable to ascertain any basis for concluding that Defendants' confiscation of Plaintiff's legal papers was warranted by policy or otherwise, nor have they argued that such confiscation is not causing Plaintiff irreparable injury.

Therefore, for the reasons set forth above, the Court hereby ORDERS that Plaintiff's motion for preliminary injunction (Docket #4) be DENIED IN PART and GRANTED IN PART. Specifically, the Court ORDERS that Plaintiff's motion for preliminary injunction is DENIED insofar as it relates to the personal property Defendants confiscated from Plaintiff (as described in the Report and Recommendation) and GRANTED insofar as it relates to the legal materials Defendants confiscated from Plaintiff (as described in the Report and Recommendation). Further, the Court ORDERS Defendants to return to Plaintiff all legal materials that Defendants confiscated from Plaintiff.

IT IS SO ORDERED.

Dated: December 2, 2014

S/Lawrence P. ZAtkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE